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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/617,218

07/10/2003

Frank S. Glaug

28120

2366

7590

08/30/2006

Tyco Healthcare Retail Group, Inc.
601 Allendale Road
King of Prussia, PA 19406

EXAMINER

ANDERSON, CATHARINE L

ART UNIT

PAPER NUMBER

3761

DATE MAILED: 08/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/617,218	Applicant(s) GLAUG ET AL.	
	Examiner C. Lynne Anderson	Art Unit 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 June 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) 20-33 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

Applicant's arguments filed 15 June 2006 have been fully considered but they are not persuasive.

In response to the applicant's argument that Otsubo fails to disclose an arcuate portion of the leg opening, it is noted that while Otsubo shows in figures 3 and 4 a simplistic rendering of the article in which the lower edge portions of the leg openings appear straight, Otsubo discloses in paragraph [0022] that the lower edge 13 is curved. The curvature of the lower edge is clearly shown in figures 1.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-14 and 16-19 are rejected under 35 U.S.C. 102(e) as being anticipated by Otsubo et al. (US 2002/0151864).

Otsubo discloses a disposable protective undergarment having a pants-shaped chassis 1, as shown in figure 1, having a front waist portion 11, a belly portion 2, a rear waist portion 12, a rear back portion 3, a crotch portion 4, and leg openings 41. The leg openings 41 have a high-cut concave edge portion 42 in the front portion, as shown in

figure 3, and a convex edge portion in the rear portion, as shown in figure 4. The edge portions are arcuate, as shown in figure 1. An intermediate edge portion connects the edge portions of the front and rear, as shown in figure 5. When the undergarment is worn, the undergarment covers a substantial portion of the wearer's leg beneath the buttocks while a substantial portion of the front of the wearer's leg is exposed, as shown in figure 5.

With respect to claim 2, the leg openings are elasticized, as disclosed in paragraph [0020].

With respect to claim 3, the leg openings are elasticized by elastic thread 23, 24, extending along the edge portions, as shown in figure 1.

With respect to claims 4 and 5, a plurality of transversely extending elastic threads 18, 19 are located in the front and rear waist portions and belly portion, as shown in figure 1.

With respect to claims 6, 16, and 19, the undergarment includes an absorbent core 33 comprising a highly absorbent material, as disclosed in paragraph [0035].

With respect to claim 7, the undergarment includes an absorbent core 33, an insert sheet 31, and a gasketed compartment 35 having elastic threads 39, as shown in figure 1.

With respect to claim 8, the undergarment comprises a first group 28 of elastic threads in the front waist region, a first group 19 in the rear waist portion, a second group 23 in the belly portion, and a second group 24 in the rear back portion, as shown in figure 1.

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With respect to claim 9, the crotch portion 4 is a separate member 84 having a pair of sides and a pair of ends, as shown in figure 6.

With respect to claim 10, elastic thread 23 extends along the concave portion, elastic thread 24 extends along the convex portion, and elastic threads 39 extend along the sides of the separate member, as shown in figure 6.

With respect to claim 11, the separate member 84 has a rectangular shape, as shown in figure 6.

With respect to claims 12 and 13, the elastic threads 23, 24, 18, and 19, include a plurality of elastic threads.

With respect to claim 14, the chassis comprises a nonwoven material, as disclosed in paragraph [0020].

With respect to claims 17 and 19, a fluid acquisition layer 31 is disposed over the core 33, as shown in figure 1.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Otsubo et al. (US 2002/0151864) in view of Good et al. (5,843,056).

Otsubo discloses all aspects of the claimed invention with the exception of the nonwoven material being spunbond polypropylene. Teaches the use of spunbond

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polypropylene as a suitable nonwoven material for the topsheet of an absorbent article, as described in column 5, lines 51-64. It would therefore be obvious to one of ordinary skill in the art at the time of invention to construct the article of Otsubo with a spunbond polypropylene, as taught by Good, to provide a suitable nonwoven topsheet for the article.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-6 and 14-19 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 8, 9, 11, 12-20, and 24 of U.S. Patent No. 6,607,515. Although the conflicting claims are not identical, they are not patentably distinct from each other because the instant claims differ from the patented claims only in the lack of disclosure of fastening members. It is well-known to

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provide a protective undergarment with fasteners to allow the undergarment to be easily attached around the waist of a wearer.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Lynne Anderson whose telephone number is (571) 272-4932. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

CA
cla
August 28, 2006

TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER

